

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1710 OF 2001

Mohanlal Ghanshamdas Kukreja & anr..Petitioners.

Vs.

M/s.Mohanlal Ghanshamdas & Ors. ..Respondents.

....

Mr.A.V.Jain for the Petitioners.

None for the Respondents.

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CORAM : DR.D.Y.CHANDRACHUD, J.

16th March, 2006.

P.C. :

1. The office noting shows that the Respondents have been served. No appearance has been filed on behalf of the Respondents.

2. The Petitioners are the Original Plaintiffs in a suit instituted in the Small Causes Court against the First and Second Respondents for eviction. The First Respondent has been sued as a

tenant while the Second Respondent is alleged to be a subtenant. The suit premises consist of a shop, bearing Shop No.2 situated on the ground floor of a building at 72/80, Nagdevi Cross Lane, Mumbai 400 003. The Petitioners claim to hold 85% of the right, title and interest in the building, while it is submitted that the Third Respondent holds 15% undivided share. The suit has been instituted on the grounds of arrears, subletting and additions and unauthorized permanent alterations. The suit is pending before the Small Causes Court. An application for amendment under Order 6 Rule 17 of the Code of Civil Procedure was moved by the Petitioners. That application came to be dismissed by the Learned Trial Judge by his order dated 25th February, 2000.

3. A perusal of the proposed amendment would demonstrate that by the proposed amendment the Petitioners seek to place on the record certain additional facts relating to the contention of the Petitioners that the Third Respondent who is one of the co-owners of the property has acted in collusion with the First Respondent herein inter alia by accepting rent and in purporting to grant

permission for carrying out additions and alterations. Counsel appearing for the Petitioners has fairly conceded that a part of the proposed amendment by which a declaration was sought against the Third Defendant (the Third Respondent herein) cannot be maintained and he accordingly submits that, that part of the proposed amendment is not pressed as against the Third Defendant. However, in so far as the rest of the amendment is concerned, I see no reason why the Learned Trial Judge in Small Causes Court should have disallowed the amendment. The tenability or the merits of the case which is sought to be established does not warrant consideration since that is a matter which will have to be addressed by the Trial Judge. In the circumstances, the Petitioners are entitled to succeed in part. The order of the Learned Trial Judge dated 25th February, 2000 is quashed and set aside. The application for amendment shall stand allowed, save and except for the prayer for declaratory relief that is proposed to be moved as against the Third Defendant. Hence, save and except for the addition of proposed prayer (ba) which is not pressed by the Petitioners, the rest of the amendment is allowed. The Petition is

disposed of in the aforesaid terms. There shall be no order as to costs.